

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 290

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on April 17, 2001
at 12:30 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Mike Halligan (D)
Sen. Walter McNutt (R)
Rep. Cindy Younkin, Vice Chair (R)
Rep. Butch Waddill (R)
Rep. Christopher Harris (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Staff
Mary Lou Schmitz, Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: **HB 290**

Senator Grosfield said the Senate amended the Bill by removing the word "deception". He said it was probably at his insistence that the word was removed. The reason was "deception" is defined in statute and he was concerned by the statement in **EXHIBIT (cch84hb0290a01)**, #5, page 2, "Because of this deception, the victim was INCAPABLE of giving consent".

Valencia Lane said that defines the statute being amended in the Bill which tells you what "without consent" means for purposes of prosecution under the "intercourse without consent" statute.

Senator Grosfield said what concerned him was discussed a little bit. He cited a scorned woman syndrome and having a disgruntled

ex-lover try to go after a former husband, boy friend etc. under this statute which is pretty serious and worried about charges.

Rep. Harris asked **Senator Grosfield** what would be a circumstance? **Senator Grosfield** said the promise of something in exchange for a relationship and that relationship goes sour and then they would claim a deception is involved. Those scenarios brought up in committee were taken care of by either "surprise" or "coercion". He is worried about unintended consequences. **Rep. Harris** said he shared his general view but thinks its modified by the phrase "overcome by" where there is a little bit of deception.

Senator McNutt said he voted for striking the word "deception".

Senator Halligan cited an example of a physician giving a pap smear but does something else. **Rep. Harris** said in that instance the prosecutor would have no problem at all proving deception.

Rep. Harris agreed with **Senator Grosfield** that it is broad but "overcome by deception" takes care of that problem. **Senator Halligan** said **Kirsten LaCroix, Senior Deputy Missoula County Attorney**, who testified in the committee, turns down at least two-thirds of the cases that are brought to her because she can't prove it. That is how difficult these cases are to prosecute.

Senator Grosfield said this needs to be fixed but his only concern is about unintended consequences and are we going too far?

Motion: **Senator Halligan** moved that "deception" be reinserted on Page 1, line 16 and in the Title.

Discussion: **Senator Grosfield** said he is somewhat convinced and whether it is thought of in terms of deception, coercion or surprise, the victim is incapable of consent because the victim never had any reason to see it coming. In the case of the seduction that is done by enticement there is still consent and that is why it would not come up as a potential case under this statute. **Rep. Harris** said that is correct. The victim has been overcome by deception and as a result of that is incapable of consent as opposed to a situation of a seduction case where she is capable of consent.

Vote: Motion carried unanimously 6-0.

ADJOURNMENT

Adjournment: 12:55 P.M.

SENATOR LORENTS GROSFIELD, Chairman

Mary Lou Schmitz, Secretary

LB/mls

EXHIBIT (cch84hb0290aad)